

REMARKS

This responds to the Office Action dated on July 26, 2007.

Claims 1 and 20 are amended. Claims 1-10 and 20-29 are now pending in this application.

§102 and §103 Rejection of the Claims

Claims 1-10, 20-22 and 25-29 were rejected under 35 U.S.C. § 102(b) for anticipation by Jensen et al. (U.S. Patent No. 6,752,765). Claims 23 and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Jensen et al. (U.S. Patent No. 6,752,765) in view of Koh et al. (U.S. Patent No. 7,207,947). The rejections are traversed and reconsideration is respectfully requested.

Claims 1 and 20 have been amended herein to recite a device and method, respectively, in which an output signal is generated as a function of an autonomic tone signal and a measured activity signal, the output signal is compared to a baseline value, and a patient's health status is classified based upon the comparison. One measure of autonomic tone is heart rate variability, and the Jensen et al. reference appears to disclose a cardiac device configured to collect heart rate and heart rate variability data and calculate trends associated therewith. However, Applicant can find no teaching or suggestion in Jensen et. al for calculating an output signal as a function of both heart rate variability and a measured activity level and comparing that output signal to a baseline value in order to classify a patient's health status. Although the Jensen et al. device does measure activity level, that activity level measurement is only used to confirm that the patient is inactive before the heart rate or heart rate variability data is collected. By only collecting heart rate variability data when the activity level is within a particular range, the Jensen et. al device obviously does not compute any kind of functional relationship between heart rate variability and activity level. Applicant believes that, by restricting the collection of heart rate variability data to a resting activity level, the Jensen et. al reference actually teaches away from the recitations of claims 1 and 20 as amended herein.

For the reasons given above, Applicant believes that claims 1 and 20 are neither anticipated nor rendered obvious by the prior art of record. Furthermore, the recitations of dependent claims 2-20 and 21-29 are neither taught nor suggested by the cited references in the

context of their combination with either claim 1 or claim 20. Withdrawal of the rejections is respectfully requested.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (847) 432-7302 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date October 26, 2007

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 26 day of October 2007.

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